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Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

**CASE: Iowa Telecommunications and Technology
Commission Petition for Waiver, CC Docket No. 96-
45, AAD/USB File No. 98-37.**

Dear Ms. Salas:

Please accept this letter as the timely submitted comments of the Rural Iowa Independent Telephone Association ("RIITA").

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A. Executive Summary.

The Commission's ruling with regard to state telecommunications networks is well founded. The ICN has advanced no ground which justifies reversal of the Commission's ruling. The 131 independent telephone companies comprising RIITA daily work at the technological leading edge of telecommunications service to create a resource for rural Iowa. ICN's request would be detrimental to the resource for rural Iowa which RIITA members constitute. Granting ICN's request would distort the economics which enable RIITA member companies working in the private sector to ably serve rural Iowa.

B. RIITA Members Have Long Worked At The Technological Leading Edge Of Telecommunications Service To Create A Resource For Rural Iowa.

RIITA is comprised of 131 independent telephone companies¹ serving over 300 Iowa communities. RIITA members are proud of their leading edge technology such as providing service through 100% digital switching, 2,500 miles of fiber optic facilities in addition to the INS backbone for a total of 10,000 miles of private sector fiber optic facilities. Fully 90% of RIITA members provide local dial up Internet access to their customers. RIITA members provide service over 25,000 miles of buried cable.

C. RIITA Believes The Commission's Order On Reconsideration Is Well Founded And Should Not Be Reversed.

The Commission concluded in its order on reconsideration that state telecommunications networks do not meet the definition of "telecommunications carrier" because they do not offer telecommunications on a common carrier basis.² The consequence of the Commission's ruling is that state telecommunications networks may not receive direct reimbursement from the universal service administrator for the provision of

¹ The RIITA Bylaws state, "Active members of this Association shall consist of rural, substantially facilities based telephone companies operating in the State of Iowa serving fewer than 20,000 access lines."

² Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Fourth Order on Reconsideration, FCC 97 420, ¶ 187 (released December 30, 1997) ("Fourth Order on Reconsideration").

telecommunications services to eligible schools and libraries, but may instead obtain and pass through discounts on behalf of schools and libraries.³

The February 4, 1998 letter of the Iowa Telecommunications and Technology Commission, which operates the Iowa Communications Network (“ICN”)⁴ submits three reasons to reverse the ruling of the Commission. None of the three reasons offered by the ICN are sufficient to reverse the ruling of the Commission.

ICN’s First Ground. The first ground advanced by the ICN is “. . . while ICN provides a limited range of services, it holds itself out to all of its potential customers for those services.”⁵

The “range of services” provided by ICN is indeed “limited”. The statutory purpose to be served by the ICN is to assure that “communications of state government be co-ordinated to effect maximum practical consolidation and joint use of communications services.”⁶ The ICN is further “limited” in that ICN “shall not provide or resell communications services to entities other than public and private agencies.”⁷ The most important limitation of all is found in IOWA CODE Chapter 23A, Noncompetition by Government. The ICN shall not “unless specifically authorized by statute, rule, ordinance, or regulation” provide “services to the public which are also offered by private enterprise unless such * * * services are for use or consumption exclusively by the state agency or political subdivision.” IOWA CODE §23A.2(1)(1997).

It is instructive to match ICN’s first ground to the Commission’s ruling. The ICN does not meet the requirement that service offerings be made indifferently to all potential customers. ICN fails to join issue with the dispositive finding of the Commission: “Because the record does not contain any credible evidence that a state telecommunications network offers or plans to offer service indifferently to any requesting party, we find that state telecommunications networks do not offer service ‘directly to the public or to such classes of users as to be directly available to the public’ and thus will

³ Id., ¶ 187 - ¶ 189.

⁴ Letter from J. G. Harrington, Counsel for the Iowa Telecommunications and Technology Commission to Magalie Roman Salas, Secretary of the FCC, dated February 4, 1998 (“ICN Letter”).

⁵ ICN Letter, page 3.

⁶ IOWA CODE § 8D.1, Purpose, (1997).

⁷ IOWA CODE § 8D.11(2) (1997).

not be eligible for reimbursement from the support mechanisms pursuant to section 254(h)(1).”⁸

How the ICN “holds itself out” to its lawfully limited potential class of customers is a conclusory statement of no probative worth unless linked to a documented system of generally available terms and conditions for all of its customers. Thus, consideration turns to ICN’s second ground.

ICN’s Second Ground. The second ground advanced by the ICN is “. . . ICN offers its services on generally available terms and conditions and does not negotiate individually with any of its customers.”⁹

ICN itself suggests the existence of individual negotiations with its customers because ICN claims over 500 “separate service agreements”.¹⁰ Simply put, if ICN offers its services on the basis of “generally available terms and conditions and does not negotiate individually with any of its customers” there is no evident reason for ICN to have over 500 “separate service agreements”.

The significance of ICN’s contradictory statements relate to ICN’s claim of “generally available terms and conditions” -- ICN’s claim of over 500 “separate service agreements” does not coincide with traditional tariff requirements imposed on common carriers. Absent a showing of a framework of tariffed “generally available terms and conditions” overseen and subject to some degree of enforcement by a regulatory authority ICN’s claim of “generally available terms and conditions” is illusory.

ICN’s Third Ground. The third ground advanced by ICN is “ the number of individual customers it serves.”¹¹ ICN states, “Simply put, the size of ICN’s customer base certainly exceeds any upper limit on the number of customers that a private carrier may have . . .”¹²

ICN’s third ground does not directly answer the relevant question. The relevant question asked considers the character of ICN’s services and customers. The answer ICN offers regarding numbers of customers fails to directly match the question asked and therefore is of little persuasive worth.

⁸ Fourth Order on Reconsideration, ¶ 188.

⁹ ICN Letter, page 3.

¹⁰ ICN Letter, page 4. (“. . . ICN now serves more than 500 discrete entities pursuant to separate service agreements.”)

¹¹ ICN Letter, page 4.

¹² ICN Letter, page 4.

D. Conclusion.

ICN has wholly failed to advance any reason to merit a reversal of the sound decision of the Commission. The Commission should deny ICN's request and go about the business of protecting and enhancing universal telecommunications service.

Respectfully submitted,

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